C. PLAN OF REORGANIZATION

In this proceeding, the Southern New England Telecommunications Corporation proposes to modify its the organizational structure in order to execute its business strategy. In so doing, SNET represents to the Department that its actions comport with the requirements of the Act, the 1996 Federal Act, and various other Department and FCC directives governing its operations. Specifically, as set forth previously, SNET proposes to:

- separate the retail and wholesale business units that currently reside within the corporate framework of the Southern New England Telephone Company (Telco);
- transfer all of the Telco's retail operations and retail customers to SNET America Inc. (SAI) and discontinue the Telco's retail service offerings;
- empower SAI to offer to all end users on a statewide basis a variety of services, including local services, intrastate services, interstate services, international calling and a number of enhanced services;
- subject SAI to the same state and federal regulatory requirements as are imposed on other CLECs;
- continue to operate the Telco as a telephone company/public service company for purposes of Connecticut law;
- operate the Telco in accord with provisions set forth by the Department in its March 13, 1996 Decision in Docket No. 95-03-01 and as an incumbent local exchange carrier (ILEC) under federal law;
- maintain wholesale service tariffs, priced initially at retail minus avoided cost, for all existing Telco service offerings consistent with current federal pricing standards;
- preserve tariffs for intrastate and interstate access and unbundled network elements previously approved by the Department;
- price new wholesale services offered by the Telco at TSLRIC plus a contribution to SNET's overhead;
- retain ownership and operational control of all distribution plant and core network infrastructure in the Telco, subject to all requirements of state and federal law;
- restrict the business purpose of the Telco to serve the needs of CLECs and other wholesale customers; and
- conduct all business transactions between SAI and the Telco in accordance with Parts 32 and 64 of FCC regulations as amended by the 1996 Federal Act.

SNET maintains that its actions are a necessary response to the "dramatic legislative changes" contained within the 1996 Federal Act that, in its opinion, "essentially prevents ILECs from differentiating their retail services from those of their competitors." Application, p. 3. SNET further asserts that some interpretations by the FCC of the 1996 Federal Act, "clearly secure the competitive viability of the CLECs" by providing them "a competitive edge over ILECs through both pricing and product innovation." Application, p. 4. SNET states that such an advantage is unnecessary to foster competition and unwarranted. According to SNET, the imprimatur of the FCC in

its First Report and Order will severely impede the development and deployment of new telecommunications and information technologies by the ILEC unless its organizational response is adopted by the Department. SNET Reply Brief, pp. 32-35.

D. DEPARTMENT ANALYSIS

The Department set forth in its December 6, 1996, Statement of Scope of the Proceeding (Scope) its intent to ensure that SNET affiliate strategies, structures and standards conform to the governing state and federal rules and regulations. Scope, p. 2. The Department cited in that notification, Public Act 94-83 and the 1996 Federal Act as the statutes that would serve as the foundation for its investigation. Subsequent to issuance of the Scope, on December 24, 1996, the FCC issued the First Report and Order and Further Notice of Proposed Rulemaking in Docket CC 96-149 Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended. The Department has reviewed the issues addressed in that proceeding and has concluded that, even though specific issues resolved in the FCC proceeding are similar to issues presented in this docket, an independent examination of all the relevant affiliate issues presented in this proceeding is necessary in order to fully satisfy the Department's responsibilities under Conn. Gen. Stat. §§ 16-47b, 16-247a and 16-247k. It is the Department's opinion that even though specific issues resolved in the FCC proceeding exhibit some level of similarity with issues presented by various parties for consideration in this docket, the Department must fully examine their relative merits before adopting any final disposition, The Department remains of the opinion that SNET (by virtue of not being a Bell Operating Company) is not subject to the requirements of the FCC Order in that proceeding unless the Department deems compliance essential to protect the public's interest and/or to conform with Public Act 94-83.

The Department has concluded however, that the structural and transactional requirements set forth in §§272(b), 272(c)(a), 272(d)(3), 272(e) and 272(g) of the 1996 Federal Act offer a useful set of standards to guide the Department's investigation of SNET's proposed reorganization. The dictates set forth in those sections are operationally achievable, reasonably sustainable and serve to ensure that any two entities sharing common ownership and/or management do not unfairly benefit from their corporate relationship. The risks and benefits of affiliate relationships do not differ based on the pre-Divestiture relationship of the applicant to the Bell System. Therefore, the Department adopts the Federal Act's standards as the minimum standards to apply to SNET's affiliate relationships.

Accordingly, in the context of SNET's proposed reorganization, SAI must:

- operate independently from the Telco;
- maintain books, records, and accounts in the manner prescribed by the Department and separate from the books, records, and accounts maintained by the Telco;
- have separate officers, directors, and employees from those of the Telco;
- not enter into any credit arrangement which would permit a creditor, upon

default, to have recourse upon the assets of the Telco; and

- conduct all transactions with the Telco on an arm's length basis with all such transactions reduced to writing and available for public inspection.

Furthermore, the Telco must:

- not discriminate between any affiliate business unit of the Telco and any other entity in the provision or procurement of goods, services, facilities, and information or in the establishment of standards;
- account for all transactions with any affiliate business unit in accordance with accounting principles designated or approved by this Department;
- fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or to its affiliates;
- not provide any facilities, services, or information concerning its provision of facilities and/or services to any CLEC affiliate entity unless such facilities, services, or information are made available to other CLEC providers in the Connecticut market on the same terms and conditions;
- charge any CLEC affiliate, or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange services and exchange access services that is no less than the amount charged to any unaffiliated CLEC for such service;
- provide any facilities, services, or information concerning its provision of such facilities and/or services to all CLEC providers at the same rates and on the same terms and conditions so long as costs are properly allocated among interested affiliated and nonaffiliated entities; and
- not engage in marketing and/or sales of facilities, services or information offered by any CLEC affiliate as either a fulfillment agent, joint representative or fulfillment.

In this proceeding, the Department committed itself to an exhaustive review of the submissions by the applicant and parties. In so doing, the Department continues to be mindful of a) the gravity represented by the topics raised in this proceeding for consideration; and b) the significance of any decision it renders upon the future development of the telecommunications market in Connecticut. It is also mindful of the importance this proceeding represents to the people of Connecticut who have entrusted the Department to protect their interests in this matter.

This proceeding represents the culmination of the Department's effort to implement the statutory requirements introduced in Public Act 94-83 and the 1996 Federal Act. Though each of these acts represent independent legislative and regulatory initiatives, they share a common commitment to the idea that greater public benefit can be realized with greater competition than with greater regulation. Each of these statutes reflect a firm legislative commitment to the advancement of competition and the acceleration of technological innovation for the future. The Department

concurs with these goals and believes that the evaluative framework it has chosen to employ in this proceeding is consistent with the legislative intent of both acts.

The issues presented to the Department for consideration in this proceeding by all of the interested parties are too numerous to recite individually but can be grouped into two general areas for consideration. Simply stated, the objections and concerns raised by the interested parties in this proceeding coalesce around two principle themes of SNET's proposal, a realignment of organizational structure and a renascent operational strategy that such a structure purportedly affords the Telco. The Department is sensitive to these and has, in the conduct of this proceeding, given serious consideration to the consequences on both of any potential action by this Department. However, the Department is legally charged to ensure that representations and rulings made in this proceeding are consistent with the statutory objectives and regulatory strictures that govern the telecommunications industry. Therefore, the Department must ensure that its actions comport with both the state and federal laws governing the telecommunications industry.

1. Business Unit Separation

By the terms of its reorganization plan, SNET proposes to separate the retail and wholesale telecommunications business functions currently residing within the common corporate framework of the Telco. Participants in this proceeding have generally objected to the proposed segregation of the retail and wholesale market responsibilities, and have presented a variety of arguments. The most common argument asserts that pursuant to the 1996 Federal Act, retail and wholesale market functions are companion responsibilities of an ILEC that cannot be independently performed by an ILEC and a CLEC. According to this argument, any reassignment of responsibilities between the ILEC and CLEC triggers redesignation of the CLEC as an incumbent local exchange carrier under the terms set forth in §251(h)(2) of the 1996 Federal Act and subjects the CLEC to the same regulatory regime as that imposed on an ILEC.

SNET contends that functional separation of its wholesale and retail activities into different business units represents a natural conclusion to the decade-long evolution of process improvements directed at better serving end-user consumers and IXC services' providers. Furthermore, SNET argues that reorganizing retail and wholesale activities into discrete lines of business signifies formal recognition of the differences in service expectations that will emerge in the future between retail end-users and customers of wholesale service.

The Department must determine: 1) whether structural separation is explicitly prescribed or precluded under state and federal statute, and 2) if neither prescribed nor precluded by law, does structural separation of the two activities serve the public's interest in competition?

SNET is a Connecticut chartered holding company that currently supports seven, wholly-owned and fully-separated subsidiary business units engaged in various

segments of the telecommunications, entertainment and information services markets. In addition to the Telco, SNET's corporate family is comprised of SNET America Inc., SNET Cellular, Inc., SNET Credit, Inc., SNET Diversified Group, Inc., SNET Mobility, Inc., SNET Personal Vision, Inc. and SNET Real Estate, Inc. Each of these business units operates independently of one another pursuing a scope of business endeavor defined for it by the SNET corporate business strategy and approved by the SNET Board of Directors and the shareholders they represent.

The Department has reviewed provisions of Public Act 94-83 and the 1996 Federal Act and has found no specific statutory provisions either prescribing or precluding SNET's plan to segregate its retail and wholesale functions into two independently-managed business units. The absence of any consideration of the specific issue in either statute represents an understanding and acceptance of the sufficiency of current state and federal law governing corporate structures to regulate the business affairs of the telecommunications industry as well as the general business community. The Department has, on a number of occasions in the past, stated its general belief that management must be permitted to manage the affairs of its business without undue and unwarranted regulatory involvement. It is only when management has shown itself incapable of effectively managing its affairs that the Department will become involved. In the Department's view, consistent with governing corporate law, any changes in corporate strategy and/or business unit definition are at the sole discretion of the SNET Board of Directors and its management designees. The interest of the Department in either change is limited to ensuring that any proposed change is consistent with state and federal law and does not negatively impact the public's interest.

The Department's experience in regulatory proceedings pertaining to SNET's interexchange carrier services' activities suggests that the functional separation of end-user and IXC service provisioning systems introduced in the mid-1980's have generally proven beneficial for both end-users and IXCs. By specializing its technological and managerial resources to the individual needs of its end-users and IXCs, the Telco has been able to improve LEC provisioning processes for services and facilities to both customer groups. The Department has not been made aware of any substantive problems associated with this strategy and structure. To further reinforce the level of support available to IXCs and CLECs by further specialization at the Telco seems both prudent and proper to the Department.

The Department finds no compelling reason in the evidence presented by the parties in this proceeding to intercede in the proposed corporate realignment of marketing and customer service responsibilities between the Telco and another designated business unit of SNET. In the current proposal, SNET plans to designate another business unit within its corporate family to serve as its retail end-user representative in Connecticut. As the corporate parent of both designated business units, SNET remains ultimately accountable for the actions of both business units, irrespective of the form of regulatory treatment accorded them under the federal and state statutes. Such accountability effectively preserves all current protections afforded by the Department's rules and regulations on the Telco in particular, and SNET in

general.

Participants opposing SNET's proposal, however, argue that in effect the Plan envisions a Southern New England Telephone Company that is exempt from certain ILEC obligations imposed on the Telco by the 1996 Federal Act and the FCC's implementation of that act. Such participants contend that the act was itself designed to prevent any relief from those responsibilities through a sale or restructure of the ILEC business unit. Specifically, the parties argue that the requirement that an ILEC resell their retail services at wholesale rates minus avoidable costs[15] must apply to a CLEC retail unit (in this case SAI), through the operation of § 251(h)(1) of the 1996 Federal Act.

Section 251(h)(1) of the 1996 Federal Act provides that an incumbent local exchange carrier is a local exchange carrier that:

> (A) on the date of enactment of the Act, provided telephone exchange service in such area; and
>
> (B) (i) on such date of enactment, was deemed to be a member of the exchange carrier associate pursuant to section 69.601(b) of the [FCC's] regulations (47 C.F.R. 69.601(b)); or
>
> (ii) is a person or entity that, on or after such date of enactment, became a successor or assign of a member described in clause (i)

Those opposing SNET's reorganization proposal maintain that, through the operation of this section, the incumbent local exchange responsibilities, including the resale at wholesale obligation, pass through to SAI as the successor or assign of the Telco. Such participants further argue that the reasoning applied by the FCC to separate affiliate issues in its First Report and Order in CC Docket No. 96-149, Implementation of Non-Accounting Safeguards of Section 271 and 272 of the Communications Act of 1934, as amended (adopted Dec. 23, 1996), should also be applied here. In that First Report and Order, the FCC concluded that:

> a BOC may not transfer local exchange and local exchange access facilities and capabilities to the Section 272 affiliate, or another affiliate, in order to avoid regulatory requirements. . . . We conclude that, if a BOC transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to Section 251(c)(3), we will deem such entity to be an "assign" of the BOC under section 3(4) of the Act with respect to those network elements.

First Report and Order, ¶ 309.

SNET responds that the "successor or assign" language of the 1996 Federal Act

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[15] 1996 Federal Act, §§251(c)(4), 252(d)(3).

requires an analysis of the nature of the assets transferred from the ILEC before any conclusion can be reached. SNET contends that the 1996 Federal Act may require an entity to be considered a successor or assign of the ILEC if that entity succeeds to all of the assets of an ILEC. If, however, only a limited portion of an ILEC's assets are transferred, SNET maintains that the entity does not become an ILEC by virtue of the transaction. Because only retail activities will be transferred to SAI, while the network facilities will remain with the Telco, SNET asserts that there is no justification for the finding that SAI will be a successor or assign of the Telco following the proposed restructure. SNET Brief, pp. 36 and 37.

OCC argues that the Department should view the definition of a successor or assign at least as broadly as the Bell Operating Companies who submitted comments in the FCC's Non-Accounting Safeguards Proceeding. Since the Bell Operating Companies argued in that proceeding that an affiliate should only be a successor or assign if it substantially takes the place of the BOC in the operation of one of the BOC's core businesses (see First Report and Order at ¶303), and since SNET's retail local exchange business is a core business, OCC argues that SAI should be considered a successor or assign of the Telco. OCC Brief, pp. 14 and 15.

In Connecticut, a successor has always been interpreted to constitute another corporation which, by a process of amalgamation, consolidation, or duly authorized legal succession, has become invested with the rights and assumed the burdens of the first corporation. To be a successor, the succeeding corporation should, in all material aspects, "stand in the boots of the old one." D.D.J. Electrical Contractors, Inc. v. Nanfito & Sons Builders, Inc., 40 Conn. Sup. 50, 52 (1984). The Department, therefore, concludes that SNET's proposal, which entails assumption of retail activities by SAI, does not place SAI in the stead of the Telco in all material aspects. The Telco and SAI operated as independent business units of SNET prior to the date of enactment of the 1996 Federal Act and will both continue to operate as business units if the proposed reorganization is approved. Nothing presented by the participants in this proceeding suggests that with approval of the proposed separation of wholesale and retail responsibilities the Telco will relinquish any of the interconnection responsibilities set forth in §251(a), §251(b) or §251(c) of the 1996 Federal Act or those set forth in Conn. Gen. Stat. §16-247b(b). Given that the Telco will continue to retain full ownership and operational responsibility of the public switched network, such responsibilities imposed by Public Act 94-83 and the 1996 Federal Act remain with the Telco. Accordingly, SAI is not a successor organization for purposes of this proceeding and purposes of applying §251(h)(1)(B)(ii) of the 1996 Federal Act and comports with additional provisions set forth in §16-247b(b) of the Conn. Gen. Stat. and §251(b) and §251(c) of the Federal Act.

Further, the Department finds no compelling evidence to suggest that SAI constitutes an "assign" of the Telco warranting regulatory treatment of SAI as an ILEC under §251(h)(1)(B)(ii) of the 1996 Federal Act. The alignment of market responsibilities among business units has been, is, and will remain the managerial responsibility of SNET, even were the Department to adopt the proposed reorganization in toto.

Moreover, the Department does not accept NECTA's argument that the language of §251(h)(1) of the 1996 Federal Act requires SAI to be considered an assign because the Telco will transfer to SAI ownership rights to provide retail services. NECTA Reply Brief at 5. While SNET's reorganization proposal does contemplate a transfer of customers to SAI that might be considered an assignment, the mechanics of the reorganization provides customers the option to affirmatively choose their carrier. Under this scenario, therefore, it is the customers that effect the reassignment of their account to the retail provider of their choice; consequently, the transaction is no more an assignment than any of the millions of PIC selections that have occurred in the interexchange market since the implementation of presubscription.

In conclusion, SAI's assumption of certain service related activities is not sufficient cause to consider it an "assign" or "successor" by terms of the definition set forth in §§251(h)(1)(B)(i) and 251(h)(1)(B)(ii) of the 1996 Federal Act. The Department finds that the structural separation of wholesale and retail market activities by SNET and the consequent realignment of market responsibilities between the Telco and SAI is not precluded by current state or federal law, continues to be a managerial prerogative of the corporate Board of Directors and presents no imminent threat to the development of competition in Connecticut. Therefore, SNET's request for separation of end-user retail and CLEC/IXC wholesale activities into separate business units is approved.

2. Discontinuance of Retail Operations

SNET proposes that the Telco discontinue offering all retail services on January 1, 1998. SNET estimates that such services currently comprise approximately 400 individual tariff offerings employed by residential, commercial, industrial, educational, governmental and medical subscriber groups as well as interexchange carriers, wireless services providers, competitive local exchange carriers, coin-operated telephone operators, alternative operator services providers, alarm service companies, Internet service providers and broadcasters.

The participants in this proceeding opposed to any termination of retail operations by the Telco suggest that an ILEC cannot withdraw from the retail market and remain in compliance with provisions of the federal law which mandates resale and dictates the methods of pricing of ILEC telecommunications services. Specifically, opponents cite §251(c)(4)(A) of the 1996 Federal Act which provides that ILECs have a duty to offer for resale any service currently offered at retail and §252(d)(3) of the 1996 Federal Act which requires a wholesale price to be a function of the equivalent retail rate for the service minus certain avoided costs. Opponents assert that a qualified retail offering must be available to satisfy the requirements set forth for an ILEC in both of these sections. SNET asserts that any Department requirement imposed on the Telco to make available retail service offerings once SAI is empowered to represent it in the retail market is unwarranted under terms of both state and federal law and unnecessary to facilitate competition.

The Department finds little support in the record for the relatively rigid interpretation put forth in this proceeding by opponents of SNET's proposal regarding retail duties and obligations of an ILEC. Opposition to the Telco's discontinuance of retail operations is generally constructed on a rather Byzantine definition of an ILEC referenced in §251(h)(2)of the 1996 Federal Act. In contrast however, the Department has found sufficient evidentiary and statutory support to suggest that selective participation, or non participation, in the retail sector by an ILEC is well within the operational framework afforded SNET by state and federal statutes. Specifically, §251(c)(4)(A) of the 1996 Federal Act serves to limit the universe of resale obligations for an ILEC to only a "telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." This section makes a purposeful distinction between duties and obligations of an ILEC when dealing with qualified telecommunications carriers and those prescribed for dealing with retail subscribers. Unlike the discretionary authority afforded an ILEC in §251(c)(4)(A) of the 1996 Federal Act, to selectively participate in the retail market, federal law, as well as previous Department Decisions, afford an ILEC no discretionary authority in matters related to interconnection with a qualified telecommunications carrier. Requirements of the Telco to negotiate, interconnect and unbundle ILEC network facilities set forth in §251 of the 1996 Federal Act, §16-247b of the Conn. Gen. Stat. and the Department's Decision in Docket No. 94-10-01 remain unquestioned by this Department and the parties in this proceeding.

The Department also finds that an ILEC is under no legal obligation to make generally available any telecommunications technology or network infrastructure at retail unless it deems it to be in its own best interest. Accordingly, the ILEC is free to offer all, some, or none of its capabilities as a retail service offering. However, once a decision is made by the ILEC to offer a particular service or capability on a retail basis, the ILEC then assumes an attendant obligation under the terms of §251(c)(4)(A) of the 1996 Federal Act to make available an equivalent wholesale offering to qualified telecommunications carriers at a wholesale price set in accordance with terms contained in §252(d)(3) of the 1996 Federal Act.

The Department is also of the opinion that §251(c)(4)(A) of the 1996 Federal Act affirms that retail telecommunications services represent only a subset of all telecommunications services and, as such, do not constitute the total universe of telecommunications services that might be offered by an ILEC. Correspondingly, only those telecommunications services which are found within that retail subset are subject to the resale requirements and pricing strictures set forth in §252(d)(3) of the 1996 Federal Act. Accordingly, any commitment to provide a telecommunications service at retail is a discretionary decision by the ILEC. Correspondingly , any decision to not provide a telecommunications service at retail is also the discretionary decision of an ILEC. The complement of services offered at retail (and simultaneously at wholesale) must reflect the strategic interests of the ILEC and the role it envisions for itself in the evolving marketplace.

Moreover, wholesale pricing strictures set forth in the 1996 Federal Act apply exclusively to that subset of telecommunications services which are offered at retail to

subscribers who are not telecommunications carriers. This effectively precludes any requirement for an ILEC to offer a discount on access services and network elements made available to CLECs and IXCs under terms and conditions set forth in §§251 and 252 of the 1996 Federal Act and §16-247 of the Conn. Gen. Stat.

Accordingly, the Department does not object to SNET's proposed withdrawal from the retail market coincident with its proposed reorganization on January 1, 1998. The Department will direct SNET to submit a formal implementation plan for withdrawal no later than September 1, 1997. In so doing, the Department views its actions to simply represent concurrence with a managerial decision and not unwarranted regulatory interdiction in the competitive marketplace. The nature of the proposed action, however, makes it necessary for the Department to qualify its support for SNET's actions and introduce certain conditions. The Department is of the view that withdrawal at the retail level by the Telco must be complete and with no exceptions, if the competitive landscape is to remain level for both incumbents and new entrants. Likewise, the Telco must restrict availability of its wholesale product/service offerings to telecommunications services, access services and network elements to qualified CLECs and IXCs for subsequent reuse and resale to end-users. All current subscribers of special service contracts, custom service arrangements, special assemblies and/or other nontariffed noncompetitive service offerings of the Telco must be released from said obligations. These subscribers shall be released from their obligations coincident with the effective date of the Telco's wholesale tariff and provided an adequate opportunity to negotiate equivalent service commitments from qualified CLECs through June 1, 1998. Previous representations made by SNET to any subscriber must be performed by SAI and constructed upon the appropriate wholesale tariff offerings of the Telco.

With these conditions, the Department accepts the proposed withdrawal of the Telco from the retail market coincident with designation and certification of a CLEC business affiliate as the exclusive retail representative of SNET. The Department's acceptance will, therefore, be contingent upon regulatory approval of a qualified CLEC business unit which is wholly-owned and operated by SNET. Conversely, the Department will not accept the proposed retail withdrawal if SNET is unable to present a qualified CLEC application by the appointed date for withdrawal or subsequently proposes to forego any corporate participation at the retail level either before or after the effective date of withdrawal.

3. Transfer of Retail Customers

SNET proposes to transfer corporate responsibility for all Telco retail customers that do not affirmatively elect a CLEC other than SAI to be their retail service provider to SAI effective January 1, 1998. SNET also proposes to transfer to SAI, coincident with its retail customers, all assets and employees associated with the provisioning of retail telecommunications services. According to SNET, the mass transfer will relieve the Telco of all administrative and operational responsibilities associated with the retail market and permit it to devote full attention to the needs of the CLEC and IXC communities.

Participants in this proceeding have generally expressed opposition to SNET's proposal on the basis that competitors cannot reasonably challenge SAI for the right to serve as the recipient organization for the Telco's retail customers. In their view, SNET's proposal to transfer all of the retail market to SAI constitutes a grossly unfair act and must be rejected as contrary to the intent of both the state and federal statutes. According to these critics, SAI has evidenced no professional qualifications that justify the award of a CPCN yet will be the beneficiary of a gift from the Telco simply on the basis of the common corporate parentage it shares with the Telco.

Moreover, critics of SNET's proposal assert that SAI materially benefits from a set of competitive advantages denied any other prospective contestant. Specifically, such opponents submit that the projected transition costs are understated, control of customer information by the Telco will limit a competitor's ability to market against SAI and pricing flexibility afforded SAI as a CLEC will severely restrict another CLEC's ability to effectively compete. SNET in turn argues that the projected costs to the Telco are reasonably accurate, information available to SAI will be the same as that available to other competitors, and retail pricing policies of SAI will be largely reflective of the wholesale prices charged by the Telco to SAI for unbundled network elements and wholesale telecommunications services. Accordingly, SNET believes that its proposal is fair and equitable to all CLECs.

The Department has carefully considered the points made regarding SAI implementation costs, information and pricing policies and is satisfied that nothing proposed by SNET in these specific areas presents sufficient concern to warrant categorically denying SNET's request to transfer its customer base to SAI. The Department, however, must modify the proposal in certain areas to ensure that neither the public nor the development of competition are negatively impacted by such actions.

The projected costs to SAI of the transition are forward-looking and represent a reasonable facsimile of the efforts involved in implementing any transfer policy approved by the Department. The Department fully recognizes the possibility that implementation costs incurred by the Telco may exceed those proposed in SNET's Response to OCC-2, and must make provision for such possibility in order to protect the interests of both the retail and wholesale customers of the Telco. Therefore, the Department will require that all financial liability for the implementation costs incurred by the Telco be assumed by SAI, irrespective of those allowances proffered by SNET in its response to OCC-2. To facilitate full recovery of Telco costs from SAI, the Telco must immediately segregate all costs associated with the transfer and establish an implementation account wherein all the segregated costs from the date of approval of the proposed transfer will be recorded and subsequently audited by the Department for accuracy pursuant to provisions set forth in §272(c)(3) of the 1996 Federal Act.[16] The

[16] §§ 271 and 272 of the 1996 Federal Act address the affiliate relationships and affiliate transactions of the Bell Operating Companies. SNET is not, by definition, a Bell Operating Company and therefore not automatically subject to the terms and conditions set forth in these sections for their affiliate matters. However, the instructions set forth in those sections governing affiliate transactions are appropriately

Telco will not be permitted to incorporate any identified implementation costs from SAI that are associated with the proposed transfer into any subsequent petition for regulatory relief under terms set forth in the March 13, 1997 Decision in Docket No. 95-03-01. Therefore, the measures set forth in this Decision sufficiently safeguard against any unwarranted assignment of costs by SNET or unwanted assumptions of costs by the Telco.

The Department has also considered the question of customer information and has concluded that two issues warrant consideration: the question of information passed to SAI from the Telco in the course of realigning the retail activities of the Telco and SAI; and the question of information subsequently made available to a nonaffiliated CLEC by SAI when a change in service provider to another CLEC is initiated.

Regarding the first issue, SNET represented that information provided to SAI in conjunction with any proposed realignment of retail market activities will be limited to information integral to maintaining continuity with the customer service activities previously performed by the Telco. Some participants in this proceeding have suggested that, under the terms of the proposal, the Telco will be providing market information to SAI that it is not otherwise entitled to as a CLEC. SNET maintains that the subsequent scope of information provided to any CLEC, once the transfer is completed, is prescribed by both state and federal statutes governing interconnection and the development of competitive markets. Opponents of SNET's Proposal assert that SAI is not subject to the same duties and obligations prescribed for the Telco in §251 of the 1996 Federal Act and Conn. Gen. Stat. §16-247 and therefore, is not bound to fulfill commitments prescribed by statute for the Telco. According to such opponents, it is essential that the Department supplement those directives to protect against SAI refusing to provide any of the customer information sought by competitors once it assumes responsibility for the retail market. These critics argue that lack of this information will severely frustrate the development of competition in Connecticut and deny the public a fair opportunity to exercise choice in the future.

The Department is concerned that the flow of essential information for the efficient discharge of responsibilities by any organization, be it incumbent or new provider, not be negatively impacted by the actions of either the Telco or this Department. The transferal of certain customer information from the Telco to SAI coincident with the proposed realignment of retail responsibilities is essential to effective management of the retail function and in the best interests of the customer. The Department is compelled, however, to modify the proposed scope of information provided to SAI in the interests of both fairness to all interested participants and to the public. While the Department is sensitive to SNET's arguments that certain information regarding customers is essential to meet the expectations of the public for service, the Department is equally concerned that the segment of the Connecticut public which may opt for the services of another competitor not be unduly put at risk. If, as SNET contends, the information provided to SAI is essential to maintain the quality of service the public has come to expect, then the Department can only reasonably assume that

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applied in this proceeding

similar information is essential to meet the expectations of the public from another retail provider. Therefore, the Department deems it critical to the development of effective competition that: a) the universe of information provided to SAI by the Telco be limited to only those customers that will be, at the effective date of transfer, retail customers of SAI; b) the scope of information be limited by the Telco to that information deemed critical to ongoing management of the retail subscriber function; and c) corresponding information available from the Telco related to non-SAI retail customers be provided to the respective serving CLEC on the same terms and conditions prescribed for SAI. With those qualifications, the Department finds no reason to deny SAI use and eventual ownership of Telco customer information systems currently used in support of the Telco's retail activities.

With regard to the second information issue, i.e. information subsequently made available to a nonaffiliated CLEC by SAI when a change in service provider is initiated, the Department agrees with participants in this docket that state and federal statutory requirements imposed upon CLECs in matters of information disclosure are extremely limited. If SAI is separately granted a CPCN in Docket No. 97-03-17, it will be regarded and regulated as a CLEC unless the Department takes action in that proceeding to treat SAI differently.

After considering the requests made of it in this matter by the parties, the Department finds no basis for imposing any additional duties, obligations and/or requirements on SNET or its retail business unit beyond those currently stipulated by state and federal acts. The Department has not found the speculative arguments presented in this proceeding to be sufficiently compelling to warrant action under §16-247g(c)(5) of the Conn. Gen. Stat. and/or §254(f) of 1996 Federal Act. The Department remains of the opinion that the General Assembly and Congress envisioned a very limited role for the regulatory community in the competitive marketplace of the future. Both federal and state statutes are generally silent on issues related to CLEC-CLEC relations. The Department can only presume that both bodies assumed the open entry provisions contained within both statutes would sufficiently discipline the conduct of all CLECs such that additional involvement by the regulatory community was unnecessary. The Department finds no reason at this time to question the confidence in a competitive marketplace expressed by the Connecticut General Assembly or the Congress. Accordingly, the Department will confine its interests in this proceeding to ensuring information provided by the Telco to non-affiliated CLECs coincident with the reassignment of the retail functions from the Telco is consistent in content and uniform in quality with that provided to SAI. The Department will not involve itself in matters associated with CLEC-CLEC operations beyond restating its belief that concerns such as those presented here are better resolved in the constructs of an interconnection agreement.

The Department finds it interesting that little concern has been expressed by docket participants regarding the risk to the Connecticut public that might be attendant with approval and implementation of any transfer of the Telco customer base to SAI. The Department cannot ignore the potential risk to the public of a mass transfer to SAI and thus must modify SNET's proposal to ensure the protection of the public and the

continued development of competition. The Department is not certain whether such disregard constitutes an unintentional oversight on the part of the interested parties of an issue critical to the Department or whether the interested parties perceive no risk in such a wholesale transfer of customers. In either case, the Department is of the opinion that a degree of risk is presented by the proposal to both the public and to the future development of competition. Therefore, certain provisions must be made to mitigate any potential damage that might result from adoption of the Proposal. Specifically, the Department will deny the request of SNET to transfer en masse to SAI on January 1, 1998 the retail customers of the Telco. Instead, the Department will require that an impartial election process be established to permit business and residential subscribers adequate opportunity to express an informed choice of retail service providers. To ensure competitive equity at the time of the Telco's approved withdrawal from the retail market, the Department will deem all CLECs certified on or before October 31, 1997 to be eligible service providers entitled to automatic inclusion in the balloting process for their respective Modified Labor Market Areas (MLMAs). Any eligible CLEC wanting to be placed on the ballot must notify the Department in writing prior to December 31, 1997 of its intent to participate in the process. Participating CLECs must agree to provide to any prospective subscriber in their service MLMAs the service or services sought by the customer for a period of not less than one year. The Department assumes that SAI will accept any subscriber irrespective of the desirability given their stated willingness in the proposal to accept all of the Telco installed base on January 1, 1998.

On or before September 1, 1997, the Department will identify and contract with an independent firm to manage the election process on behalf of the public under authority granted the Department in Conn. Gen. Stat. §16-8. All costs associated with the election process and the assignment of default subscribers will be initally borne by SNET and then proportionately assigned and reimbursed by the participating CLECs in proportion to their respective local exchange market shares.

The Department proposes as a provisional plan to conduct balloting in all areas of the state commencing on March 1, 1998. The balloting will continue in three waves with subsequent voting materials provided on April 1, 1998 and May 1, 1998.[17] Each current Telco customer will be issued a ballot through the U.S. mail and will be given four weeks to make an affirmative selection and return the ballot by mail to the program administrator. Any subscriber who fails to elect a retail provider in the given timeframe will be randomly assigned by the administrator to a retail provider certified to provide local service in the subscriber's MLMA. The assignments to any particular provider, however, will be in direct proportion to the percentage of voting subscribers in the relevant MLMA that have affirmatively selected that provider. Each subscriber who fails

[17] The Department has divided the state of Connecticut into three geographic areas each comprising a number of MLMAs for purposes of efficiently managing the election process. The Eastern Area will comprise the Northeast Connecticut, Southeast Connecticut and Hartford East MLMAs and receive materials on March 1, 1998. The Central Area will consist of the Hartford Central, Hartford West and New Haven MLMAs and receive materials on April 1, 1998. The West Area will contain the Litchfield, Waterbury, Danbury, Stamford and Bridgeport MLMAs and receive materials on May 1, 1998.

to make an affirmative selection within the prescribed four week time period allowed by the process will be notified of the provider to which the subscriber has been assigned. Subscribers for whom a random assignment is made will then have two weeks to notify the Administrator of their intention to change providers. Subsequent to the close of the election process, subscribers requesting a change in provider may be subject to fees by the affected CLECs. To facilitate efficient and effective implementation of this process the Department proposes to hold a series of technical meetings with the interested parties at the conclusion of this proceeding to identify and address issues of concern that have emerged in this conduct of this proceeding. The Department has incorporated to this Decision as Attachment A a tentative framework for discussion and modification by the interested parties.

The Department envisions that the election process will be completed on or before July 1, 1998, and will be a relatively equitable process for SAI and all other CLECs. However, some additional instructions are necessary to encourage participation by the CLECs while at the same time limiting the potential for "gaming" the process. Accordingly, the Department will monitor the process for unwarranted abuse by firms seeking to accumulate a share of the market at the time of election and then reselling it or exchanging it with another CLEC. Any CLEC suspected of this act will be directed to show cause why its CPCN should not be revoked and a fine imposed under the provisions of Conn. Gen. Stat. §16-247g. Additionally, the Department will not permit outbound telemarketing activities to be initiated by or on behalf of a participating CLEC until 60 days prior to issuance of the ballots for each MLMA. No time or funding limits will be imposed on the use of print media, electronic media or direct response telemarketing activities. If the Department finds four violations of these telemarketing rules by a participating CLEC during the campaign period for that MLMA, the CLEC will be automatically removed from the non-select assignment pool. Finally, the Department will establish information reporting requirements, due on July 1, 2000, for all participating CLECs for use in a 2-year evaluation review of the program.

A related but independent matter of operational support and mechanized operational support systems was raised in this proceeding by a number of interested participants. Generally, the concern was expressed that both operational support and mechanized operational support systems afford SAI a substantive competitive advantage in a competitive market. Accordingly, a number of recommendations have been made in this proceeding intent upon reducing the level of unwarranted advantage that they might afford SAI in the future.

The Department has considered the matter in accord with statutory responsibilities that the Telco has under §16-247b(b) of the Conn. Gen. Stat. to provide nondiscriminatory access to its networks and facilities and §251(a)((2) of the 1996 Federal Act to ensure against installing features, functions or capabilities that do not comply with guidelines and standards for interconnectivity set forth in §256 of that act. In so doing, the Department has sought to understand whether the proposed support mechanisms constitute an intentional impediment by the Telco to the development of full and fair competition or simply a misfortune of time. After review of the evidence submitted in this proceeding, the Department is of the opinion that the Telco appears to

be making a concerted effort to make available the operational support and mechanism operational support systems deemed necessary by the CLECs for the future. However, some timeframes proposed by the prospective users appear relatively ambitious and present some potential for harm to the public if introduced without sufficient opportunity for testing and evaluation. Therefore, the Department is reluctant to require the Telco to truncate its development schedule and rush something into the market however unproven or unreliable it might be. Given that any failure or perceived failure of the operational support systems by the public will reflect upon the service quality of the respective serving CLEC, we are certain that most participants in this proceeding will agree with the Department's conclusion.

However, in affording the Telco additional time to bring online the mechanized operating support systems sought by the CLECs the Department remains concerned about the equity of information and capabilities afforded SAI by the use of the MSAP system . This system has the potential of providing SAI a significantly enhanced service fulfillment capability not available to other CLECs at the present time. In the opinion of the Department, until such time as the Telco has equivalent capability on line for use by nonaffiliated CLECs this mechanized operating support system affords SAI a tacit advantage in certain segments of the market. Therefore, as a means of ensuring competitive equity to all participants and to serve as an encouragement to the Telco to rededicate itself to the development and deployment of mechanized operational support systems for the other CLECs, the Department will require the Telco to identify to the Department and certify by December 31, 1997 that any features, information and capabilities afforded by the MSAP (and currently unavailable to other CLECs), are available for use by nonaffiliated CLECs. If SNET is unable to make such warranties to this Department the Telco will reduce the level of mechanized operational support proposed for SAI to a level that is equal to or less than that available to nonaffiliate CLECs. At such time that the Telco can attest to this Department that CLECs other than SAI have available to them comparable capabilities, the Department will release the Telco from this operational restriction. In so doing, the Department is of the opinion that the terms and conditions governing access to, and use of the network facilities of the Telco will be sufficiently nondiscriminatory at the time the election process is initiated to satisfy the requirements set forth in Section 251(c)(2)(D) of the Telecommunications Act of 1996.

By making these provisions in this Decision, the Department's actions are consistent with provisions of the state and federal statutes governing the development of competition and the protection of the public's interest in maintaining access to reliable and cost-effective telecommunications services. This Decision is also consistent with the intent of both the Connecticut General Assembly and the United States Congress to provide Connecticut end users with the greatest opportunity to exercise personal control over their telecommunications decisions.

4. Expansion of SAI Service Offerings

SNET has proposed to empower SAI to offer to all end users a variety of telecommunications and information services, including local services, intrastate

services, interstate services and international calling and a number of enhanced telecommunications services. In so doing, SNET suggests that the general public has a preference for a retail provider capable of offering a broader set of telecommunications and information services than is currently available from SAI. Concern has been expressed in this proceeding that permitting SAI to assume responsibility for services currently offered by the Telco would unfairly advantage SAI in competition with other CLECs.

The Department has considered SNET's proposed expansion of SAI's line of products and services and finds nothing in either the state or federal statutes that explicitly or implicitly precludes such an initiative by the corporation. The Department also finds no compelling evidence to suggest that permitting SAI to offer a broader set of products and services to the retail subscriber in any way places the general public at greater risk of abuse by SNET and its subsidiaries.

The products and services to be offered by SAI constitute repackaged wholesale offerings of the Telco, customer premise equipment formerly provided by SNET Diversified Group and contracted offerings of other SNET subsidiaries and non-affiliated services providers. Those Telco wholesale offerings used by SAI to construct its retail telecommunications services remain subject to the general availability requirements stipulated for such services in both Conn. Gen. Stat. § 16-247b and §251(c)(4) of the 1996 Federal Act. Any expansion by SAI of the complement of products/services it offers does not in any way diminish the applicability of those two statutory provisions to the Telco. In the Department's view, the scope of retail participation defined by SNET for SAI is independent of the statutory obligations for resale and unbundling applicable to the Telco.

It is reasonable to assume that the family of products/services offered by SAI will continue to change over time irrespective of the availability of certain Telco services. The interest of the Department in this matter is limited to ensuring that any product/service expansion envisioned for SAI does not unduly disadvantage other prospective CLECs seeking to avail themselves of the same material sourcing options available under Conn. Gen. Stat. §16-247b and §251(c)(4) of the 1996 Federal Act. Any effort or ability of SAI to control availability of underlying technology available from the Telco would be counter to the interests of the public and this Department. The Department will hold the Telco accountable in future proceedings to ensure that its administrative and operational support for a broader set of SAI products and services does not discriminate against other market participants.

In response to the suggestion by some participants that the Department take a broader interest in such issues, it is important to note that there exist limits to the Department's authority. Specifically, the Department is not authorized to challenge any commitment by SNET or SAI to enhance the retail product/service family of SAI with products/services either directly contracted from other SNET nonregulated affiliates or licensed from nonaffiliated commercial enterprises. Any such marketing agreement falls outside the statutory authority of the Department until such time as one of the signatory parties is the Telco. With that understanding forming the foundation for its

position on the issue of product/service expansion, the Department is of the opinion that retail representations by SAI for nonregulated and/or nonaffiliated products/services providers are both permissible and desirable from the public standpoint. However, any offering made available by the Telco must be made available on the same general terms and conditions to all CLECs.

In summary, under the reorganization proposal SAI, acting as the retail representative of SNET, is entrusted with a larger set of product/services offerings. Accordingly, SAI achieves some additional latitude in how it presents itself to the retail market vis-à-vis other prospective entrants. With a broader product/service line, SAI has the ability to package its capabilities in a manner consistent with the market's preferences and to differentiate itself from other prospective competitors. In the Department's view, both pursuits are consistent with the goals of the state and federal statutes and, accordingly, warrant Department endorsement. The Department finds no objection to broadening SAI's product/service family.

5. SAI Regulatory Treatment

SNET has proposed that SAI be subjected to the same state and federal regulatory requirements as are imposed on other CLECs.[18] SNET claims that if SAI's request for a CPCN in Docket No. 97-03-17 is approved under the terms and conditions specified in Docket No. 94-07-03, SAI will be a CLEC no different than other CLECs. Opponents of SNET's proposal generally argue that even if SAI's request for a CPCN is approved in Docket No. 97-03-17, it will be impossible to consider SAI simply another CLEC. Such opponents assert that market position and brand name will accord SAI an unwarranted competitive advantage in a competitive market that cannot be matched by competitors. Accordingly, some participants recommend that the Department impose additional strictures on SAI to normalize the market inequities that otherwise will exist in the future.

The Department has considered the arguments set forth on the issue of regulatory treatment of SAI and notes that Conn. Gen. Stat. §16-247g(b)(3) of the Conn. Gen. Stat. specifies only three conditions that may be considered by the Department when evaluating an applicant's request for a CPCN: financial resources, managerial ability and technical competency. The Department is not permitted by law to take into consideration the relative impact, good or bad, upon the market of participation by an applicant seeking a CPCN. Additionally, the Department cannot waive or supplement the areas of consideration specified in the statute as the case may warrant in order to realize some desired public policy goal. Clearly, Conn. Gen. Stat.

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[18] The Department has previously certified 19 applicants including AT&T and MCI, both parties to this proceeding. Application procedures for authority to operate in Connecticut as a CLEC were established by this Department in accord with Section 16-247g of the Conn. Gen. Stat. in Docket No. 94-07-03 DPUC Review of Procedures Regarding the Certification of Telecommunications Companies and of Procedures Regarding Requests by Certified Telecommunications Companies to Expand Authority Granted in Certificates of Public Convenience and Necessity. All of the parties present in this proceeding including AT&T, MCI, NECTA, and OCC actively participated in Docket No. 94-07-03, which set forth the prescribed tests and standards for certification of all CPCN applications.

§16-247g(b) provides little room for the liberal interpretation sought by some participants in this proceeding.

Separate from that view, but equally relevant to the subject, is the fact that the Department has repeatedly expressed an unwillingness to adopt any policy, position or interpretation that constitutes asymmetrical regulation in order to stimulate broader corporate participation in the telecommunications markets. Nothing has been presented in this proceeding to suggest that either the Connecticut General Assembly or the United States Congress empowered the Department to erect arbitrary and capricious entry barriers in direct contradiction of Conn. Gen. Stat. §16-247c(c) and §253 of the 1996 Federal Act and to apply them exclusively to SAI in this proceeding. The Department will not pursue policies that simply serve to sustain an unwarranted advantage by one competitor over another. The Department affirmed that position in Docket No. 94-07-03 and finds no compelling reason in this proceeding to retreat from its position.

Therefore, the Department will not recommend any additional regulatory tests, standards or requirements above those specified in Conn. Gen. Stat. §16-247g and previously applied to other CPCN applicants be appended to the application of SAI for a CPCN in Docket No. 97-03-17. Furthermore, the Department remains of the opinion that no new evidence beyond that presented in Docket No. 94-07-03 has been introduced to this proceeding by the parties which suggests that the act of conferring a CPCN upon SAI is either inconsistent with provisions made in the 1996 Federal Act, contrary to the best interests of the public or fails to support the goals set forth in Conn. Gen. Stat. §16-247a. Accordingly, SAI's application for a CPCN in Docket 97-03-17 shall be subject to the same tests, standards and requirements applied to any other CLEC applicant. If, upon review of the SAI application the Department deems it appropriate to confer CLEC authority upon SAI, it will accord the same privileges and impose the same responsibilities on SAI as any other certificated CLEC.

6. Telco Regulatory Treatment

SNET proposes that the Department continue to treat the Telco as a public service company subject to rules and regulations set forth by the Department for public service companies under §16-262i of the Conn. Gen. Stat. and the orders imposed by the Department in its Decision in Docket No. 95-03-01. Additionally, SNET commits to operate the Telco as an ILEC under the provisions set forth in §§251 and 252 of the 1996 Federal Act. According to SNET, such commitments sufficiently protect the interests of the public in matters of service and price.

The Department has reviewed SNET's proposal and finds no evidence or argument put forth by the participants that would require the Department to revise or rescind the regulatory framework prescribed for the Telco in Docket No. 95-03-01. In that proceeding the Department sought to construct a set of operating parameters that afforded the Telco sufficient opportunity to compete fairly and the public sufficient opportunity to realize affordable alternatives for service. The Department has sought in this proceeding to advance those same goals in the context set down in the March 13,

1996 Decision in Docket No. 95-03-01. Nothing submitted in this proceeding suggests that those goals will not be realized if SNET's Proposal is adopted and the regulatory framework set forth in Docket No. 95-03-01 for the Telco is maintained.

The Department regards the Proposal as little else than a realignment of certain responsibilities currently performed by various subsidiary business units on behalf of SNET. However, in the proposed realignment, the Telco has not expressed an interest in relinquishing any of the responsibilities entrusted to an ILEC under §§251 or 252 of the 1996 Federal Act and §§ 16-247b, 16-247g and 16-247k of the Conn. Gen. Stat. With the exception of restricting sales of telecommunications services to CLECs and IXCs, the operations and administration responsibilities performed by the Telco will remain relatively unchanged.

Testimony submitted in this proceeding strongly affirms SNET's commitment to maintain the duties and obligations set forth in both state and federal statutes for the Telco. That decision preserves the ability of the Department to directly and independently exercise its regulatory authority on behalf of competitors and the Connecticut public. With that commitment by SNET, the Department is confident that the principles set forth in Docket 95-03-01 are sufficient to govern the activities of the Telco under the proposed Plan of reorganization. The Department finds no need to supplement or modify its previously introduced framework for regulating the Telco. On a going-forward basis, the Telco will continue to operate as an ILEC for purposes of enforcing §§251 and 252 of the 1996 Federal Act and as a telephone company for purposes of enforcing Conn. Gen. Stat. §16-247b.

It warrants noting that in this proceeding and Docket No. 95-03-01, the Department sought to invoke authority accorded it by the United States Congress under §251(d)(3) of the 1996 Federal Act to delineate and demarcate rules of engagement for incumbent and prospective market entrants as a means of promoting fair and equitable competition. In doing so, the Department saw a corresponding need to prescribe the role of regulation as narrowly as possible so that forces of the market place could supplant regulation as the principle determinant of corporate strategy and management actions. The Proposal further reduces the role, responsibility and regimen of the Department already narrowed in Docket 95-03-01, but in no way conflicts with the principles and precepts outlined in that proceeding for overseeing the Telco in a competitive market. Adoption by the Department of the proposed treatments of SAI as a CLEC and the Telco as an ILEC offers material benefit to the Department and to the Connecticut public by simplifying the scope and scale of regulation necessary to ensure market discipline.

7. Current Telco Service Offerings

SNET proposes to establish SAI tariffs for all Telco service offerings to be effective at the time SAI commences its retail marketing initiatives. SNET also proposes to set rates for Telco offerings using two distinct approaches depending upon the regulatory classification of the specific offering. Specifically, SNET proposes to set wholesale service rates for current Telco retail service offerings at a level equivalent to

the current retail price minus the Telco's avoided cost, thereby ensuring consistency with the principles set forth in §252(d)(3) of the 1996 Federal Act. SNET notes that this method will be used only for purposes of establishing initial wholesale rates for Telco services and that any subsequent rate changes will reflect the TSLRIC cost of providing the respective wholesale service. SNET further proposes in this proceeding to abide by the approved tariffs for intrastate and interstate access and unbundled network elements previously approved by the Department with no modifications.

SNET represents to the Department that its actions and the pricing methods it proposes to employ at the Telco conform with cost and pricing mechanisms specified by §16-247b of the Conn. Gen. Stat. and §252(d)(3) of the 1996 Federal Act. In the proposed method of calculating Telco wholesale prices, SNET proposes to have the Telco utilize its current retail rate as a surrogate base for determining the initial wholesale offering rate for CLECs and IXCs. SNET notes that these methods will be used only for purposes of establishing initial wholesale rates for Telco services and that any subsequent rate changes will reflect the TSLRIC cost of providing the respective wholesale service.

After evaluating the proposal, the Department finds several aspects of this part of the proposed initiative to be of some concern.

First, SAI proposes to assume responsibility for all of the retail service offerings currently available from the Telco. However, SAI has not expressed any substantive commitment to ensure long-term retail availability of those services beyond suggesting that its offerings will be subject to price adjustments to reflect the actual costs of providing such services and competitive market conditions. Implicit within that commitment is an assumption by SNET that equivalent retail services will be available from any number of competing CLECs should SAI choose in the future to discontinue support for any current service offering because it is unprofitable.

In the Department's view, SAI is free, in principle, to withdraw from any particular retail segment of the telecommunications market at any particular time without interference by the Department. Accordingly, the commitments expressed in this proposal reflect nothing more than the current business definition and performance expectations envisioned for SAI by SNET. However, if the performance expectations of SAI prove unachievable under the current business definition, the Department assumes that SNET will revise the business definition of SAI, rather than accept lower performance by the business unit. The most likely result of a new business definition will be a reduction in the number of retail offerings and aggressive repricing of marginal retail offerings to stimulate outward movement.

Either strategy constitutes a legitimate response available to SAI in a fully competitive marketplace. However, it must be noted that the possibility that such an act might be initiated in the future does not afford sufficient precedent for any preemptive action by the Department. Nothing presented by any participant in this proceeding indicates that SAI will, in the immediate future, substantially reduce the number of retail offerings it supports or invoke unwarranted price adjustments to shift unwanted retail

subscribers. The Department can only impress upon SAI the importance of the public's trust conferred upon it by this Decision and warn them to not jeopardize it by any indefensible act.

Separately the Department examined in this proceeding the subject of Custom Service Arrangements (CSAs) and Competitive Custom Service Arrangements (CCSAs). Both agreements constitute customized business service arrangements some of which include centrex service, digital centrex service, wide area telephone services and "800" services. Though the number of subscribers currently employing these services is relatively small compared to users of less complex Telco services the Department believes that any willful disregard of their interests in this proceeding would be indefensible. Furthermore, the Department is committed to ensuring that all aspects of the retail market are fully examined and addressed in this proceeding.

Conn. Gen. Stat. §16-247f deems Centrex, digital centrex, wide area telephone services and "800" services to be competitive retail offerings of the Telco and requires that this Department treat them as such. Nothing presented in this proceeding suggests that continued treatment of these services as competitive services by the Department presents any harm to either providers or subscribers that requires additional action by the Department. It is important to note, however, that treatment of these services as competitive applies only to the respective retail service and not its wholesale counterpart. The Telco will be required at the conclusion of this proceeding to file wholesale tariffs for centrex, digital centrex, wide area telephone services and "800" services as noncompetitive wholesale offerings subject to all requirements of a noncompetitive service offering.

Further, the Department is of the opinion that such contracts represent duly negotiated arrangements and preservation of those agreements is in the best interests of the signatory parties. Accordingly, the Department will respect the terms and conditions set forth in those contractual arrangements considered to be Competitive Custom Service Arrangements(CCSAs); that is, those agreements which govern provisioning of centrex, digital centrex, wide area telephone services and "800" services. These agreements will not be subject to any "fresh look" provisions. Additionally, the Department will permit SAI to assume the responsibilities for administering these agreements for the balance of their contract life on January 1, 1998. Accordingly, SAI will be directed in this proceeding to file with the Department no later than December 17, 1997 tariffs for all CCSA agreements reflecting the approved change in retail service provider.

Separately, the Department examined the remaining Custom Service Arrangements and concluded that these agreements do not benefit from the protections afforded CCSAs in §16-247f and must be subjected to a "fresh look" by all parties. Accordingly, all Custom Service Arrangements not otherwise considered CCSAs will be open for renegotiation on January 1, 1998. The Department is of the opinion that if fair opportunity to compete is to be afforded other CLECs wholesale tariffs from the Telco for principal network and facility components must be readily available for their examination and use. Therefore, the Telco will be required to file with the Department,

no later than December 10, 1997, wholesale tariffs to support current CSAs.

Independent of any tolerance evidenced by the Department in this Decision of a future SAI product withdrawal, the Department will not be as forbearing if in the future the Telco proposes to withdraw a wholesale service from general availability or to adjust wholesale prices outside the range permitted under current authority granted in Docket No. 95-03-01. Nothing presented in this proceeding alters the opinion of the Department that the Telco remains subject to the duties and obligations set forth in §§251 and 252 of the 1996 Federal Act, §16-247b of the Connecticut General Statutes and Docket No. 95-03-01. Furthermore, SNET seems to accede to these conditions when it requests the Department continue to regard and regulate the Telco as an ILEC. Accordingly, the Department considers the offer to continue providing exchange access services and interexchange access services to CLECs and IXCs not as a discretionary decision of SNET but rather an ongoing statutory duty and obligation of the Telco. Any modification to the current complement of Telco services, either in scope or price, requires the review and approval of the Department. Any concurrence by this Department with any proposed action of SNET should not be construed to infer or imply that the Department's authority over exchange access services and interexchange access services provided by the Telco has been abridged or relinquished. The Department considers that its authority to review and restrict the actions of the Telco in the provisioning and pricing of exchange access services and interexchange access services unaffected by the outcome of this proceeding.

Separately, the evidence submitted in this and prior proceedings strongly suggests that the principal determinant of future competition in the Connecticut telecommunications marketplace will be the universe of products and services available to all CLECs from the Telco. Any reduction in the future number of service offerings available from the Telco is contrary to the goals of the Department and state and federal statutes. Accordingly, the Department will aggressively seek to increase the range of telecommunications services and unbundled network elements that will be available in the future to the CLECs from the Telco. The Department will ensure the widest possible choice for retail subscribers of the CLECs in the evolving marketplace of the future. Under direct questioning by members of the Department, firm commitments were offered by Company witnesses and counsel to technological innovation and investment by the Telco to serve the future needs of the CLECs and their customers. The Department considers those technology commitments to be vital to the realization of the goals set forth in Public Act 94-83 and will consider SNET's commitment to their pursuit to be a firm expression of their future intent.

The Department is of the opinion that current regulatory authority vested with it under both federal and state statutes is sufficient to ensure that any proposed act by the Telco to reduce the complement of product/service offerings available to CLECs will be critically scrutinized by the Department for its impact upon the development of competitive markets in Connecticut. Any such instance where the Telco petitions the Department to withdraw an existent tariff will necessitate formal review and solicitation by the Department of the affected CLECs for their interest in the matter. If it is subsequently determined that any act on the part of the Telco to reduce the number of

wholesale offerings to the CLECs is intentionally directed at stifling competitive initiatives, the Department will immediately reexamine SNET's reorganization and take actions necessary to restore competitive balance in the market.

With regard to the issue of future pricing of Telco wholesale services, the Department is equally consistent in its views. First, retail prices set by SAI are of only nominal interest to the Department as a matter of comparative reference to current retail prices of the Telco and the proposed retail prices of competitors. However, the Department is extremely interested in the wholesale prices sought by the Telco in the future. For purposes of setting wholesale prices, the Telco will generally subscribe to the pricing principals set forth in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22. In each of those instances, the Department expressed its support for pricing methodologies constructed upon TSLRIC. TSLRIC-based pricing methodologies promote both economic efficiency and competitive development. In contrast, avoided cost methodologies such as those detailed in §252(d)(3) of the 1996 Federal Act do not promote economic efficiency and will not be applicable to the Telco after the current reorganization is in effect.

Finally, any approval by the Department of SNET's proposed wholesale tariffs does not constitute automatic reclassification of the respective services or network elements as competitive. The Department is of the opinion that all wholesale services will be considered noncompetitive until such time as SNET can satisfy the requirements of Conn. Gen. Stat. §16-247f for the respective wholesale service. Accordingly, all wholesale pricing practices will conform to the rules set forth in the Department's March 13, 1996 Decision in Docket No. 95-03-01.

8. Future Telco Service Offerings

SNET proposes to price all new services offered by the Telco at TSLRIC plus a contribution to overhead consistent with the previous instructions of this Department in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22. Opponents of such methods express concern that, even though they conform with specific standards set forth by the Department in the Decisions in these dockets and general instructions set forth in Conn. Gen. Stat. §16-247b(b), they violate the intent of the federal statute to promote the development of competitive markets.

The Department's view on the issue of future Telco service offerings is relatively consistent with that expressed above for current Telco service offerings. Irrespective of the support given to SNET's reorganization plan, the Department remains committed to a policy that encourages the Telco to continually increase the range of future telecommunications services available for use by all CLECs. The underlying facility for such policy is the continuation of technology and infrastructure commitments made by the Telco into the future. See Docket No. 91-10-06, DPUC Review of Telecommunications Policies: Infrastructure Modernization, Competition, Pricing Principles and Methods of Regulation, Docket No. 94-07-01, The Vision for Connecticut's Telecommunications Infrastructure, Docket No. 94-10-01, DPUC Investigation into the Southern New England Telephone Company's Cost of Providing

Service, and the commitment by SNET in Docket No. 96-01-24, Application of SNET Personal Vision, Inc. for a Certificate of Public Convenience and Necessity to Provide Community Antenna Television Service. The Department is assured a reasonable level of investment in new technology and infrastructure improvements by the Telco, thereby ensuring additional capabilities to all CLECs and the realization of greater competition.

As a matter of course, the Department concurs with SNET that the pricing of any new services developed by the Telco and made available to CLECs will be priced in accordance with the methodologies prescribed by the Department in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22. No evidence has been presented in this proceeding to support a different conclusion. Accordingly, cost support for telecommunications services not currently provided by the Telco must be filed with the Department in accordance with the rules of construction set forth for such studies in Docket No. 94-10-01, Docket No. 95-06-17 and Docket No. 96-09-22 prior to approval by the Department of any associated tariff offering.

9. Telco Assets

SNET proposes to retain ownership and operational control of all distribution plant and core network infrastructure at the Telco and confer all obligations associated with that responsibility to the Telco. SNET acknowledges that its decision, in part, reflects statutory strictures placed upon ILECs by §251(h) of the 1996 Federal Act. By some interpretations of that provision, if SNET were to assign Telco network assets to SAI of sufficient magnitude to warrant the FCC to make a finding that SAI "substantially replaced" the Telco, it would be necessary to regard SAI as a successor to the Telco and impose a broader set of rules and regulations to govern its actions in the market. However, SNET has proposed to only transfer those assets that are necessary to manage the retail marketing and customer service functions of the Telco and not the engineering or operational activities associated with service provisioning.

The Department has thoroughly examined the asset transfer program proposed by SNET in this proceeding and considers the reassignment of the referenced assets to be in the interest of customer service and competition. It is clear from the testimony that the assets proposed for transfer to SAI are only those systems and functions developed to support the retail function at the Telco and would be of little or no use in the wholesale market environment envisioned for the Telco by SNET. The Department will thus approve the limited transfer of assets to SAI as proposed in this proceeding but will not permit any future transfer of infrastructure or network related assets to SAI or any other affiliate business unit of the Telco without use of competitive bidding procedures and Departmental approval. Furthermore, the economic cost to SAI and SNET for the associated Telco assets will be the depreciated book value or retail market value, whichever is higher, consistent with the policies of the Department regarding asset transfers between affiliate business units. All proceeds associated with the transfer will be credited to the reserve deficiency of the Telco. By pursuing this policy the Department believes its actions provide substantive compensation to the Telco, conform with rules governing affiliate transactions and the Department's policies, and materially benefits the public.